

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18703.3. Economic Interest, Defined: Source of Income.

(a)(1) For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$ 500) within 12 months prior to the time when the relevant governmental decision is made. A public official's income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income.

(2) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an interest as defined in Government Code section 87103(c). "Parents, subsidiaries, and otherwise related business entities" are defined in 2 Cal. Code Regs. section 18703.1(d).

(b) Former employers. Source of income, as used in Government Code section 87103(c) and this section, shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.

(c) Sources of Commission Income to Brokers, Agents and Salespersons

(1) "Commission income" means gross payments received by a public official as a result

of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.

(2) The sources of commission income in a specific sale or similar transaction include for each of the following:

(A) An insurance broker or agent:

(i) The insurance company providing the policy;

(ii) The person purchasing the policy; and

(iii) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.

(B) A real estate broker:

(i) The person the broker represents in the transaction;

(ii) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;

(iii) Any brokerage business entity through which the broker conducts business; and

(iv) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(C) A real estate agent:

(i) The broker and brokerage business entity under whose auspices the agent works;

(ii) The person the agent represents in the transaction; and

(iii) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.

(D) A travel agent or salesperson:

(i) The airline, hotel, tour operator or other person who provided travel services or

accommodations in the transaction;

(ii) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and

(iii) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.

(E) A stockbroker:

(i) The brokerage business entity through which the broker conducts business; and

(ii) The person who trades the stocks, bonds, securities or other investments through the stockbroker.

(F) A retail or wholesale salesperson:

(i) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and

(ii) The person who purchases the product or service.

(3) For purposes of determining whether disqualification is required under the provisions of Government Code sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

(d) Sources of Incentive Compensation. "Incentive compensation" means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive

compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services which are not marketing or sales.

The purchaser is a source of income to the official if all three of the following apply:

- (1) The official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- (2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- (3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

Comment: For further discussion of incentive compensation, see *Peninsula Health Care District v. Fair Political Practices Commission*, Sacramento County Superior Court, Case No. 02CS01766, and *In re Hanko*, O-02-088 (August 9, 2002).

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

HISTORY

1. New section filed 11-29-93; operative 12-29-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 49).

2. Change without regulatory effect amending section heading filed 7-18-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29).
3. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
4. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
5. Editorial correction of 3 (Register 2000, No. 25).
6. Amendment of subsections (a) and (c)(5)(A) filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
7. Amendment of subsection (a), repealer of subsections (c)(1) and (c)(5)-(c)(5)(B), subsection renumbering, amendment of newly designated subsections (c)(1) and (c)(3) and new subsection (d)-(d)(3) filed 11-10-2003; operative 11-10-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 46).
8. Amendment and redesignation of subsection (a) as subsection (a)(1) and new subsection (a)(2) filed 3-11-2004; operative 3-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).